

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| Petition of Qwest Corporation for Forbearance |) | WC Docket No. 07-204 |
| from Enforcement of the Commission's ARMIS |) | |
| and 492A Reporting Requirements Pursuant |) | |
| to |) | |
| 47 U.S.C. § 160(c) | | |

**REPLY COMMENTS OF THE
COLORADO OFFICE OF CONSUMER COUNSEL**

The Colorado Office of Consumer Counsel (hereinafter "OCC"), by and through its undersigned counsel, hereby files its Reply Comments to the Petition of Qwest Corporation ("Qwest") for Forbearance pursuant to 47 U.S.C. § 160(c) from enforcement of certain Automated Reporting Management Information System ("ARMIS") and 492A Reporting Requirements ("Qwest ARMIS Petition").

I. INTRODUCTION

On September 13, 2007, Qwest filed a Petition for Forbearance requesting the Federal Communications Commission ("FCC") to forbear from enforcing certain ARMIS and 492A Reporting requirements for Qwest. Specifically, Qwest's ARMIS Petition seeks, inter alia, forbearance from FCC Rules requiring submission of ARMIS Reports 43-01 (Annual Summary), 43-02 (USOA Report), 43-03 (Joint Cost Report), 43-04 (Separations and Access Report), 43-05 (Service Quality Report), 43-06 (Customer Satisfaction Report), 43-07 (Infrastructure Report), 43-08 (Operating

Data Report) (in part), 495A (Forecast of Investment Usage), and 495B (Actual Usage of Investment), and 492A Report (Rate-of-Return Monitoring Report). Qwest's ARMIS Petition is based on allegations that these reporting requirements "...serve little, if any, purpose in today's competitive telecommunications environment."¹ Additionally, and throughout the Petition, Qwest asserts that the filing of the ARMIS Reports is not necessary for consumer protection; to ensure that Qwest's rates are just, reasonable and not discriminatory; and that granting Qwest the forbearance requested would be consistent with the public interest.

The OCC is opposed to Qwest's ARMIS Petition and requests that the Commission deny the Petition. The OCC has specific concerns with Qwest's attempt via this Petition to eliminate certain FCC reporting requirements related to Qwest's service quality, separations between intrastate versus interstate operations, and other reporting which may concern operating activities having a detrimental impact on Qwest's Colorado customers as to rates, service quality and consumer protection.

The OCC was created by the Colorado State Legislature in 1984 pursuant to Colorado Revised Statute ("C.R.S.") § 40-6.5-102. Further, and pursuant to C.R.S. § 40-6.5-104(1), "The consumer counsel shall represent the public interest and, to the extent consistent therewith, the specific interests of residential consumers, agricultural consumers, and small business consumers..." in public utility telephone, gas or electric utility matters. Further, and pursuant to C.R.S. § 40-6.5-

¹ Qwest ARMIS Petition, at page 1.

106(2.5), the powers of the consumer counsel includes making “...requests...in any proceeding before a federal agency which regulates utility rates or services...when the matter before such agency...will affect a rate, charge, tariff, or term of service for a utility product or service for a residential, small business or agricultural utility consumer in the state of Colorado.” Thus, the OCC’s primary statutory mandate is broad and general: to “represent the public interest.” The concomitant mandate, which can be interpreted as somewhat less than the primary mandate, is to represent the specific interests of residential, agricultural and small business consumers as described above. Traditionally, both mandates are generally aligned in the OCC’s view. Such is the case in the instant Petition because the OCC’s entire statutory constituency, as well as the “public interest,” is affected by this Petition. Accordingly, the OCC’s Reply Comments herein will be focused on, and further limited to, addressing the Qwest ARMIS reporting requirements related to Colorado, comments filed by other parties and why it is not in the public interest or in the interest of the OCC’s statutory constituency (i.e., residential, small business and agricultural consumers) for the Commission to grant Qwest’s ARMIS Forbearance Petition.

II. THE INFORMATION AND DATA CONTAINED IN QWEST’S ARMIS REPORTS CAN NOT BE REPLICATED OR EASILY OBTAINED BY THE COLORADO REGULATORY COMMUNITY.

The Colorado regulatory community, including the OCC, cannot replicate or easily obtain the publicly available information and data that Qwest is required to

file pursuant to the Commission’s reporting requirements, and which the OCC, the Colorado Public Utilities Commission (the “Colorado PUC”), and other telecommunications carriers rely upon at various levels. In addition to the OCC’s general concerns related to customer rates, consumer protection, service quality and separations issues, if Qwest’s Petition for Forbearance as to certain ARMIS Reporting requirements is granted, it would have a potentially negative effect on the regulation of Qwest’s telecommunications services in Colorado and consequently, on Qwest’s customers, the state of competition and all Colorado consumers.

More specific examples of the usage of Qwest ARMIS data in Colorado include, but are not limited to: (1) data used to determine subsidy support levels for the Colorado High Cost Support Mechanism (“CHCSM”); (2) data used to ensure, pursuant to C.R.S. § 40-15-208(2)(a), that Qwest’s total revenues from all sources, including CHCSM and Universal Service Fund (“USF”) support, do not exceed the cost of providing basic local exchange service in Colorado; (3) monitoring Qwest’s obligations related to 2005 changes to Qwest’s regulatory scheme whereby some Qwest services were deregulated or are now regulated in a light-handed fashion; and (4) to evaluate the effects, or the lack thereof, of competition in the Colorado marketplace.²

² Note that the Colorado PUC enunciated many of these concerns in its Comments in the instant Docket. *See*, Comments of the Colorado Public Utilities Commission at pages 1 – 2.

The Joint Comments and Opposition of the New Jersey Division of Rate Counsel, Public Counsel Section of the Washington State Attorney General's Office and the National Association of State Utility Consumer Advocates ("NASUCA") filed on December 6, 2007, (hereinafter, "the NASUCA Joint Comments") contained a discussion of the need for specific ARMIS Reports in the state of Colorado.³ More specifically, the NASUCA Joint Comments discussed the inclusion status of particular ARMIS Reports in Qwest's Annual Reports to the Colorado PUC.

The OCC would clarify and expand upon this Colorado-specific discussion made in the NASUCA Joint Comments and state that Qwest's reporting requirements to the Colorado PUC are still in a transition phase but that a Docket was opened last week to accept Qwest's Petition

³ *NASUCA Joint Comments* at Pages 21 through 22.

to the Colorado PUC for the waiver and variance from certain reporting requirements.⁴ The *Petition for Waivers and Variances* filed by Qwest addresses certain of Qwest's financial reporting obligations to the Colorado PUC and seeks, among other things, to exclude ARMIS reports 43-02 and 43-08 in future filings as part of Qwest's Annual Reports to the Colorado PUC. The underlying rationale for exclusion was that such can already be viewed through the FCC's website, and paper copies attached to the Annual Report for the Colorado PUC would be redundant and burdensome. The Colorado OCC certainly understands the logic underlying the future exclusion of these particular ARMIS reports from the Colorado Annual Report and, indeed, has agreed with Qwest and the Staff of the Colorado PUC to support Qwest's *Petition for Waivers and Variances* recently filed before the Colorado PUC. However, being cognizant of the instant FCC Docket whereby Qwest is seeking to eliminate some or all of ARMIS Reports 43-02 and 43-08, and also implicitly recognizing that the Colorado OCC and the Staff of the Colorado PUC believe that such information has utility, a footnote to the agreement

⁴ See Exhibit No. 1 attached hereto, a copy of the *Petition of Qwest Corporation for Variances and Waivers*, Colorado PUC Docket No. 07V-505T, *In the Matter of the Petition of Qwest Corporation for Variances and Waivers, et. seq.* Additionally, see Exhibit No. 2 attached hereto, a copy of the *Petition of Qwest Corporation for a Variance and Waiver from Certain Reporting Requirements, et seq.*, Colorado PUC Docket No. 07V-504T, *In the Matter of the Petition of Qwest Corporation for a Variance and Waiver from Certain Reporting Requirements, et seq.* Notably, the Qwest Petition in Docket No. 07V-504T was filed on the same day as was Qwest's Petition in Docket No. 07V-505T; i.e. December 12, 2007. In Docket No. 07V-504T, Qwest seeks a Colorado PUC variance and waiver of service quality reporting obligations in Colorado. Thus, elimination of Qwest's ARMIS Report 43-05 (Service Quality Report) would severely reduce the ability of Colorado regulators to monitor Qwest's service quality in Colorado and within Qwest's fourteen-state region.

was agreed upon by the parties and incorporated into Qwest's *Petition for Waivers and Variances* as a "safety net" or "backstop" should Qwest be successful in its *Petition for ARMIS Forbearance*. The footnote states:

Qwest has filed a petition for forbearance with the FCC to eliminate these ARMIS filing requirements. *Petition of Qwest Corporation for Forbearance from Enforcement of the Commission's ARMIS and 492A Reporting Requirements Pursuant to 47 U.S.C. § 160(c)*, WC Docket No. 07-204 (filed September 13, 2007). Qwest understands that this proceeding may take 12 – 15 months from the filing date to be resolved. If the petition is granted by the FCC, Qwest will continue to provide such ARMIS reporting information in the Annual Report until such time as Qwest, Staff, and the OCC re-evaluate the data and determine what, if any, parts of the reports can be modified or eliminated.⁵

While this footnote in Qwest's *Petition for Waivers and Variances* in Colorado PUC Docket No. 07V-505T does mitigate some concern that the Colorado OCC had regarding the Staff's and the OCC's ability to obtain these reports at the state level, it certainly does not mitigate all of the concern. Despite the aforementioned footnote, the OCC has among its concerns, the following:

- That the ease and convenience of obtaining these reports via the FCC's website will not be matched by Qwest's commitment, as stated in the aforementioned footnote, to continue providing such ARMIS reporting information in the Colorado Annual Report.
- That the format will be different with a potential material effect. In other words, although Qwest has committed to "continue to provide such ARMIS

⁵ *Id.* At page 4, footnote 1.

reporting information in the [Colorado] Annual Report,” the OCC is concerned that the “reporting information” will be in a format different from the accustomed and Commission-approved “Paper Report” found on the Commission’s website. Indeed, “ARMIS reporting information” is an ambiguous enough phrase to allow Qwest to provide such information in a data format that would require additional steps by the Colorado Staff and/or the OCC in order to fully utilize such information and/or data.

- That there will no longer be a Qwest state-to-state comparison. Currently, the OCC is able to expeditiously go to the Commission’s website and, for example, click on FCC Report 43-08, Table II, to determine the number of Qwest’s switched access lines in Colorado, and in relation to Qwest’s other thirteen states, for analytical and advocacy purposes. However, if Qwest is successful in the instant Petition, this comparative information would no longer be available from the Commission and would not be provided in the information provided by Qwest to the Colorado PUC.
- That Qwest may still seek to eliminate “such ARMIS reporting information in the Annual Report” should Qwest, the Colorado Staff and the OCC not reach an agreement in the future as to the modification of such information.

Finally, although it is readily apparent, it is worth noting the context of Qwest’s *Petition for Waivers and Variances* in Colorado PUC Docket No. 07V-505T. As to ARMIS Reports, that Docket only affects two ARMIS Reports (43-02 and 43-08) for inclusion in the Colorado Annual Report as opposed to the instant

Commission Docket whereby Qwest is seeking forbearance from many additional ARMIS reporting requirements in addition to 43-02 and 43-08. Thus, to the extent that the aforementioned footnote is a “backstop” in Colorado to obtain ARMIS reporting information, that backstop only extends to ARMIS Reports 43-02 and 43-08 and not to the remainder of the ARMIS Reports from which Qwest seeks forbearance. Thus, and despite the aforementioned footnote in Colorado PUC Docket No. 07V-505T, the OCC’s concerns, stated above in these Reply Comments, remain as to the potentially negative effects on the regulation of Qwest’s telecommunications services in Colorado and consequently, on Qwest’s customers, the state of competition and all Colorado consumers.

III. CONCLUSION

Based upon the foregoing, the OCC would urge the Commission to deny Qwest’s Petition for Forbearance from certain ARMIS and 492A Reporting Requirements in its entirety.

DATED this 21st day of December, 2007.

Respectfully Submitted,

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